

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

WILLIE HENRY JONES,

Petitioner

V.

NO. 4:94CV231-B-D

EDWARD M. HARGETT, ET AL,

Respondents

O P I N I O N

This cause comes before the court on the petition of Willie Henry Jones for writ of habeas corpus pursuant to 28 U.S.C. §2254. Although the petition does not specifically state what relief he is seeking, it appears that he desires a court order requiring the Mississippi Department of Corrections (MDOC) to remove him from close confinement and to pay compensatory damage for allegedly illegally keeping him in close confinement.

Petitioner was convicted in the Circuit Court of Harrison County, Mississippi, in February, 1985, for possession with intent to distribute controlled substances.<sup>1</sup> He was sentenced to sixty years confinement.

On April 16, 1993, petitioner received a Rule Violation Report (RVR) for violating an MDOC rule regarding "using mail for personal

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<sup>1</sup> The substances were hydromorphone (dilaudid) and cocaine.

gain." He appeared before a disciplinary committee that found him guilty of the RVR and recommended that he be placed in close confinement. On May 10, 1993, petitioner was placed in close confinement and has been in that custody status since that date.

On April 4, 1994, petitioner filed an action<sup>2</sup> in the Circuit Court of Sunflower County. This action was later dismissed, on motion of the respondents, because petitioner had not sought relief under the Administrative Remedy Program established by the MDOC that became effective April 18, 1994. Petitioner attempted to appeal this action in forma pauperis to the Mississippi State Supreme Court, but it was dismissed on August 22, 1994, on the ground that the right to proceed in forma pauperis in civil cases in the state courts of Mississippi exists only at the trial level.

Petitioner now alleges that placing him in close confinement was not accompanied by even minimal due process; the actions of the disciplinary committee also abridged due process requirements; the state court's dismissal of his cause was a violation of the ex post facto clause of the Constitution of the United States; and he was denied the right to appeal.

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<sup>2</sup> Petitioner did not furnish a copy of the action filed in state court. Presumably it also sought his release from close confinement.

After reviewing the petition and giving it the liberal construction required by Haines v. Kerner, 404 U.S. 519 (1972), the court has come to the following conclusion.

"Any challenge to the fact or duration of a prisoner's confinement is properly treated as a habeas corpus matter, whereas challenges to conditions of confinement may proceed under Section 1983." Jackson v. Torres, 720 F.2d 877, 879 (5th Cir. 1983). Since petitioner is complaining about the conditions of his confinement, not that he should be released from confinement, his action should be brought under the provisions of 42 U.S.C. §1983. Any change to his custody status would not affect the "fact or duration of [his] confinement."

Therefore, petitioner's request for habeas corpus relief will be and is hereby denied without prejudice.

This the \_\_\_\_\_ day of \_\_\_\_\_, 1994.

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NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE